

CRIMINAL APPEAL NO.684 OF 1990.

Date of decision: 25.11.1996

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. S.R. Divetia, A.P.P. for appellant-State.

Mr. D.D. Vyas, advocate for the respondent.

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Coram: R.R.Jain,J.

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November 25, 1996.

Oral judgment:

The respondent/original accused was charged for the offence under Section 66 (1)(b) and 85 (1)(3) of the Bombay Prohibition Act and Section 117 of the Motor Vehicles Act for consuming liquor and resorting to rash and negligent driving. The learned Judicial Magistrate, First Class, Pardi, vide his judgment and order dated 8.5.1990 passed in Criminal Case No.3692 of 1987 has acquitted the respondent. Aggrieved by this order, the State/original complainant has preferred this appeal.

As a cardinal rule, in case of offences under Section 66 (1)(b) and 85 1)(3) of the Bombay Prohibition Act, the prosecution has to establish that the accused consumed liquor and the contents of alcohol in the blood were beyond the parameters prescribed under the Act.

In cases under the Prohibition Act, blood samples have to be collected and sent for examination. The State has prescribed The Bombay Prohibition (Medical Examination and Blood Test) Rules, 1959 (hereinafter referred to as the 'Rules'), for collection and forwarding of blood samples, use of official seal and monogram, persons authorised to take samples, etc. Rule 4 of the said Rules specifically provides the manner and method in which syringe is to be sterilized and the precautions to be taken. In this case, medical officer Dr. Virendra Ramanand Pande, P.W.2, has been examined at Ex.12. Of course, on clinical examination he has opined that the accused was in drunken position but such opinion would not be final as has to be fortified by blood test report. In his cross-examination the doctor has categorically stated that the syringe was not sterilized in his presence. That the seal was not applied by him nor the sample was parcelled by him. All these things were done by his Peon who has not been examined. He has also deposed that the entire procedure was not undertaken in his presence and supervision. Thus, in the facts and circumstances of this case, on the face of the record, the procedure prescribed under Rule 4 of the said Rules has not been followed and thus a doubt is created whether the syringe was sterilized by putting in boiling water and whether it was cleaned with 1% aqueous solution of mercurochrome or gentior violet not containing alcohol or its solution. A doubt is also created whether at any stage of withdrawing blood alcohol was touched. A doubt is also created whether the blood was collected and transferred into a phial containing anticoagulant and preservative. Thus, on the facts and circumstances of this case, there is a gross violation of Rule 4 of the aforesaid Rules and the blood test report cannot be accepted at its face value to prove and establish alcohol contents which would be significant to prove offence. Thus, the trial Court has rightly emphasised this aspect. The conclusion is just and proper. I do not find any infirmity or illegality and, therefore, no reason to disturb the conclusions assailed. In this view of facts and in the circumstances of the case, the appeal is devoid of merits and deserves to be dismissed. Order accordingly.